

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 SANDRA EDWARDS,

12 Plaintiff,

13 v.

14 GRUBB & ELLIS MANAGEMENT
15 SERVICES,

16 Defendant.

CASE NO. C12-91RAJ

ORDER

17
18 This matter comes before the court on plaintiff Sandra Edwards's motion to amend
19 the complaint. Dkt. # 10.

20 On January 17, 2012, defendant Grubb & Ellis Management Services removed
21 this action to this court, and on February 10, 2012, plaintiff filed her first amended
22 complaint. Dkt. ## 1, 5. Plaintiff alleges state law claims for employment discrimination
23 and tortious infliction of emotional distress. Dkt. # 5. On February 28, 2012, the court
24 stayed this action based on defendant's bankruptcy petition which triggers an automatic
25 stay on any action or proceeding against the debtor. Dkt. # 7. On November 1, 2013,
26 plaintiff provided notice to the court that the Bankruptcy Court lifted the automatic stay
27

1 to permit Ms. Edwards to pursue her employment claims to the extent of available
2 insurance proceeds. Dkt. # 9. Plaintiff now seeks to amend her complaint to add
3 defendant's insurer, Lexington Insurance Company ("Lexington"). Dkt. ## 10-11.

4 At this stage in the litigation, a party may amend its pleading only by leave of
5 court or by written consent of the adverse party. Fed. R. Civ. P. 15(a)(2). Although the
6 rule should be interpreted with extreme liberality, leave to amend should not be granted
7 automatically. *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990). "A trial
8 court may deny such a motion if permitting an amendment would prejudice the opposing
9 party, produce undue delay in the litigation, or result in futility for lack of merit." *Id.*

10 The court has reviewed plaintiff's proposed second amended complaint. Plaintiff
11 does not allege any claims against Lexington. Nor has plaintiff alleged any facts that
12 could give rise to a claim against Lexington for employment discrimination or tortious
13 infliction of emotional distress. *See Postlewait Cons., Inc. v. Great Am. Ins. Cos.*, 106
14 Wash. 2d 96, 102 (Wash. 1986) (holding that lessor was not intended third party
15 beneficiary of the insurance agreement between lessee and the insurer, rendering moot
16 the lessor's claims against the insurer). The court believes that permitting amendment
17 would be futile under these circumstances.

18 The court recognizes that the Bankruptcy Court lifted the automatic stay "for the
19 limited purpose of allowing Edwards to pursue the Employment Claims only to the extent
20 of available insurance[.]" Dkt. # 11-1 at 3. However, the order lifting the stay does not
21 control the substantive law the court must apply to the employment discrimination and
22 tortious infliction of emotional distress claims at issue in plaintiff's complaint. Plaintiff
23 may continue her claims against defendant. The procedure by which she would recover
24 any amount of potential judgment or settlement appears to be beyond this court's
25 jurisdiction.

26 For all the foregoing reasons, the court DENIES plaintiff's motion to amend the
27 complaint. Finally, the court notes that neither party moved the court for an order lifting

1 the stay. Nevertheless, the court ORDERS that the stay be lifted, and that the Clerk enter
2 the initial case scheduling deadline.

3 Dated this 28th day of April, 2014.

4
5
6 
7

8 The Honorable Richard A. Jones
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27